

Table of Contents

PART I. U.S. ANTITRUST LAWS

CHAPTER 1. UNLAWFUL AGREEMENTS

- § 1:2 Per se antitrust violations
- § 1:3 Rule of reason: Horizontal agreements
- § 1:4 Rule of reason: Vertical agreements
- § 1:5 Quick look analysis under the rule of reason
- § 1:6 Proof of unlawful conspiracy
- § 1:7 Information exchanges
- § 1:8 Boycotts
- § 1:9 Tying
- § 1:10 Resale price maintenance

CHAPTER 2. REGULATION OF DOMINANT FIRMS

- § 2:1 Introduction
- § 2:2 Defining and measuring monopoly power
- § 2:4 Attempted monopolization
- § 2:5 Conspiracy to monopolize
- § 2:6 Predatory pricing
- § 2:7 The essential facilities doctrine
- § 2:8 Other types of predation
- § 2:9 Price discrimination

CHAPTER 3. SECTION 7 OF THE CLAYTON ACT

- § 3:2 Horizontal mergers
- § 3:3 Horizontal mergers—Market definition
- § 3:4 Horizontal mergers—Effect on competition
- § 3:5 Horizontal mergers—Government enforcement policy
- § 3:6 Vertical mergers
- § 3:8 The failing firm defense
- § 3:9 Relief in Section 7 litigation
- § 3:13 Relief in international merger cases
- § 3:14 Governmental enforcement policy towards transnational mergers
- § 3:15 The Hart-Scott-Rodino Act
- § 3:16 Hart-Scott-Rodino requirements for transnational acquisitions

- § 3:17 National security review
- § 3:18 Production joint ventures
- § 3:23 Foreign merger and joint venture regulation

CHAPTER 4. ENFORCEMENT OF THE ANTITRUST LAWS

- § 4:1 Introduction
- § 4:2 United States Department of Justice
- § 4:3 Criminal prosecution
- § 4:4 Grand jury investigations
- § 4:5 Consequences of convictions
- § 4:6 Civil governmental actions
- § 4:7 International cooperation
- § 4:8 Consent decrees
- § 4:10 Competition advocacy
- § 4:11 The international antitrust guidelines
- § 4:12 The FTC
- § 4:13 Section 5 of the Federal Trade Commission Act
- § 4:14 Enforcement procedures
- § 4:15 Advisory opinions
- § 4:16 Competition advocacy
- § 4:19 Standing
- § 4:20 Antitrust injury
- § 4:21 Indirect purchasers
- § 4:22 Proving antitrust damages
- § 4:23 Exemptions from the antitrust laws

PART II. U.S. ANTITRUST LAWS AND INTERNATIONAL COMMERCE

CHAPTER 5. CARTEL ENFORCEMENT

- § 5:1 Introduction
- § 5:3 Enforcement activity in the United States
- § 5:4 Enforcement activity in the United States—Major criminal cases
- § 5:9 Enforcement activity in the United States—Major criminal cases—Ready mixed concrete
- § 5:9.10 Enforcement activity in the United States—Major criminal cases—Automotive parts *[New]*
- § 5:9.15 Enforcement activity in the United States—Major criminal cases—Marine hose *[New]*
- § 5:9.20 Enforcement activity in the United States—Major criminal cases—Air cargo *[New]*
- § 5:9.25 Enforcement activity in the United States—Major criminal cases—TFT-LCD *[New]*
- § 5:9.30 Enforcement activity in the United States—Major criminal cases—Municipal bonds *[New]*

TABLE OF CONTENTS

- § 5:9.35 Enforcement activity in the United States—Major criminal cases—Cathode Ray Tube *[New]*
- § 5:9.40 Enforcement activity in the United States—Major criminal cases—Freight Forwarding *[New]*
- § 5:9.45 Enforcement activity in the United States—Major criminal cases—Compressors *[New]*
- § 5:9.50 Enforcement activity in the United States—Major criminal cases—LIBOR and EURIBOR *[New]*
- § 5:9.55 Enforcement activity in the United States—Major criminal cases—Foreign exchange rates *[New]*
- § 5:9.60 Enforcement activity in the United States—Major criminal cases—Ocean shipping services *[New]*
- § 5:9.65 Enforcement activity in the United States—Major criminal cases—Wall decor *[New]*
- § 5:9.70 Enforcement activity in the United States—Major criminal cases—Parking heaters *[New]*
- § 5:9.80 Enforcement activity in the United States—Major criminal cases—Capacitors *[New]*
- § 5:9.90 Enforcement activity in the United States—Major criminal cases—Generic drugs *[New]*
- § 5:9.95 Enforcement activity in the United States—Major criminal cases—Employment practices *[New]*
- § 5:9.96 Enforcement activity in the United States—Major criminal cases—Government contracts *[New]*
- § 5:9.97 Enforcement activity in the United States—Major criminal cases—Intravenous saline solution *[New]*
- § 5:9.98 Enforcement activity in the United States—Major criminal cases—Online retail promotional products *[New]*
- § 5:9.99 Enforcement activity in the United States—Major criminal cases—Broiler chicken investigation *[New]*
- § 5:13 Enforcement activity in the United States—The leniency program—Antitrust Criminal Penalty Enhancement and Reform Act of 2004
- § 5:14 Enforcement activity in the United States—The leniency program—The amnesty program in operation
- § 5:15 Enforcement activity in the United States—Civil actions and state enforcement
- § 5:16 Enforcement activity in the European Union
- § 5:17 Enforcement activity in Canada
- § 5:18 Enforcement activity in other jurisdictions
- § 5:20 Increased international cooperation and convergence—Convergence of leniency programs
- § 5:21 Increased international cooperation and convergence—International cooperation between antitrust enforcement agencies
- § 5:22 Increased international cooperation and convergence—International organizations

CHAPTER 6. EXTRATERRITORIALITY

- § 6:8 The international insurance antitrust litigation

- § 6:10 United States government policy—Department of Justice policy
- § 6:11 United States government policy—Federal Trade Commission policy

CHAPTER 7. ANTITRUST PROBLEMS IN EXPORT TRANSACTIONS

- § 7:3 The Foreign Trade Antitrust Improvements Act
- § 7:4 Interpreting the Foreign Trade Antitrust Improvements Act
- § 7:11 Suits by foreign purchasers under the U.S. antitrust laws
- § 7:12 Application of foreign competition laws to United States exports

CHAPTER 8. INTERNATIONAL TRADE AND U.S. ANTITRUST LAW

- § 8:2 Service of process
- § 8:3 Avoiding “international” service
- § 8:4 Personal jurisdiction
- § 8:5 Venue
- § 8:6 Forum non conveniens
- § 8:7 Discovery of evidence abroad
- § 8:8 Proceeding under the Hague Convention
- § 8:14 Antisuit injunctions
- § 8:15 Blocking statutes
- § 8:16 Arbitration of antitrust claims

CHAPTER 9. MULTI-JURISDICTIONAL MERGERS

- § 9:3 Development of merger enforcement in foreign nations
- § 9:4 Strategic planning for multi-jurisdictional transactions
- § 9:5 Premerger notification issues
- § 9:6 The merger review process
- § 9:7 Confidentiality and waiver
- § 9:8 Substantive merger review
- § 9:10 Remedies
- § 9:13 International Competition Network (“ICN”)
- § 9:14 Other efforts at convergence and harmonization
- § 9:15 Bilateral cooperation

CHAPTER 10. INTERNATIONAL TRANSFER OF TECHNOLOGY AND INTELLECTUAL PROPERTY ISSUES

- § 10:2 Jurisdiction
- § 10:3 The cartel cases

TABLE OF CONTENTS

- § 10:4 Price restraints within legitimate licensing agreements
- § 10:5 Non-price restraints in licenses
- § 10:6 Non-price restraints in licenses—Exceeding the scope of intellectual property protection
- § 10:7 Non-price restraints in licenses—Territorial restraints
- § 10:8 Non-price restraints in licenses—Field of use restrictions
- § 10:9 Non-price restraints in licenses—Tying
- § 10:10 Non-price restraints in licenses—Grantbacks
- § 10:11 Patent Pools
- § 10:12 Settlement of patent litigation
- § 10:13 Department of Justice enforcement policy
- § 10:14 The 1995 and 2017 Antitrust Guidelines for the Licensing of Intellectual Property [*Retitled*]
- § 10:15 Antitrust and intellectual property enforcement under the 1995 Intellectual Property Guidelines
- § 10:16 Patent fraud
- § 10:17 Enforcement of intellectual property rights
- § 10:19 Gray market imports—Gray market and trademarks
- § 10:20 Gray market imports—Gray market and copyright law

CHAPTER 11. FOREIGN GOVERNMENTAL INVOLVEMENT

- § 11:2 Foreign Sovereign Immunities Act
- § 11:3 The Act of State doctrine
- § 11:4 The Act of State doctrine—The evolution of the Act of State doctrine
- § 11:7 The Act of State doctrine—Governmental representations in United States litigation—Foreign government representations
- § 11:8 The Act of State doctrine—Governmental representations in United States litigation—United States government representations
- § 11:10 Foreign sovereign compulsion defense—The requirement of actual compulsion
- § 11:11 Foreign sovereign compulsion defense—Negative compulsion and blocking statutes
- § 11:13 Foreign sovereign compulsion defense—Exceptions and limitations to the defense
- § 11:14 Foreign sovereign compulsion defense—The changing nature of the foreign compulsion defense
- § 11:15 Lobbying foreign governments

PART III. U.S. ANTITRUST LAWS AND INTERNATIONAL TRADE LAW

CHAPTER 12. COMPETITION AND FAIRLY TRADED IMPORTS

- § 12:2 Basic international trade regulatory structure

INTERNATIONAL TRADE AND U.S. ANTITRUST LAW

- § 12:3 Multilateral agreements and competition issues
- § 12:4 Bilateral and plurilateral agreements (“FTAs”) and competition issues
- § 12:5 Import relief statutes
- § 12:6 Import relief statutes—Section 201
- § 12:7 Import relief statutes—Country-specific escape clauses (section 406 (NME), section 421 (China))
- § 12:8 Import relief statutes—Sector-specific escape clauses
- § 12:10 National security/foreign policy trade restraints—Economic Sanctions
- § 12:11 National security/foreign policy trade restraints—Export controls
- § 12:12 National security/foreign policy trade restraints—Antiboycott regulations
- § 12:13 National security/foreign policy trade restraints—Section 232 (discretionary import relief based on national security)
- § 12:14 National security/foreign policy trade restraints—Exon-Florio Amendment
- § 12:15 National security/foreign policy trade restraints—Defense Production Act Antitrust Immunity

CHAPTER 13. “UNFAIR” INTERNATIONAL TRADE PRACTICES

- § 13:3 Antidumping duties—Regulatory scheme
- § 13:5 Countervailing duties
- § 13:6 Section 337 (IP-related imports)
- § 13:7 Section 301
- § 13:8 Conditional eligibility for preferential market access
- § 13:9 Foreign Corrupt Practices Act

CHAPTER 14. TRADE LAW PRACTICES THAT RAISE ANTITRUST ISSUES

- § 14:2 The costs and burdens of trade complaints
- § 14:3 The antitrust implications of sham litigation
- § 14:4 Sham litigation in international trade cases
- § 14:6 Import relief as a guise for collusion

CHAPTER 15. PURSUING TRADE RELIEF

- § 15:1 Introduction
- § 15:2 Antidumping and countervailing duty cases
- § 15:4 Antidumping and countervailing duty cases—Data gathering and analysis—Scope and domestic like product
- § 15:5 Antidumping and countervailing duty cases—Data gathering and analysis—Foreign producing countries at issue

TABLE OF CONTENTS

- § 15:6 Antidumping and countervailing duty cases—Data gathering and analysis—Injury
- § 15:7 Antidumping and countervailing duty cases—Data gathering and analysis—Allegations of dumping and subsidization
- § 15:8 Antidumping and countervailing duty cases—Data gathering and analysis—Industry support/standing
- § 15:11 Antidumping and countervailing duty cases—Preparing and filing the petition—Filing
- § 15:13 Antidumping and countervailing duty cases—Preparing and filing the petition—Preliminary injury determination
- § 15:14 Antidumping and countervailing duty cases—Conclusion
- § 15:15 Safeguard cases
- § 15:16 Safeguard cases—Prior to the petition
- § 15:17 Safeguard cases—Obtaining safeguard relief

Table of Laws and Rules

Table of Cases

Index